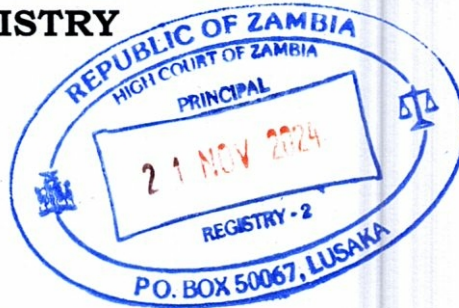


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**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
(Civil Jurisdiction)

2024/HP/1148



BETWEEN:

**CHILANGA CEMENT PLC**

**PLAINTIFF**

**AND**

**CHANGZHOU ZAMBIA RESOURCES COMPANY LIMITED**

**DEFENDANT**

**BEFORE: HONOURABLE, LADY JUSTICE G. C. CHAWATAMA IN  
CHAMBERS ON THE 4<sup>TH</sup> SEPTEMBER, 2024**

**For the Plaintiff :** *Miss. M. K. Mukuka and Miss Zenzeni both In House  
Counsel*  
**For the Defendant :** *N/A.*

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## ***RULING***

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**CASES REFERRED TO:**

1. *Towela Akapelwa (Suing as Induna Ineta) and three others v Josiah Mubukwanu Litiya Nyumbu Appeal No. 004 of 2015*
2. *American Cyanamid Co v Ethicon Co Ltd (1975) AC 396*
3. *Turnkey Properties Limited v Lusaka West Development Corporation (1984) Z.R 85*
4. *Whidden Kanugwe v Zambia Sugar PLC Appeal No, 192 of 2000*

**LEGISLATION AND OTHER WORKS REFERRED TO:**

1. *The High Court Act Chapter 27 of the Laws of Zambia.*

## 1.0 INTRODUCTION

- 1.1 This is a Ruling on an application by the Plaintiff for an order of interim injunction restraining the Defendant, its agents and or servants from carrying out mining activities, building, entering or otherwise using the land.
- 1.2 The application was initially filed ex parte and this Court directed that it be heard inter-parte. The summons was filed pursuant to **Order 27 Rule 1 of the High Court Rules Chapter 27 of the laws of Zambia. Order 27 Rule 1** provides that:

*“In any suit in which it shall be shown, to the satisfaction of the Court or a Judge, that any property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, it shall be lawful for the Court or a Judge to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, or to give such order, for the purpose of staying and preventing him from wasting, damaging or alienating the property, as to the Court or a Judge may seem meet, and, in all cases in which it may appear to the Court or a Judge to be necessary for the preservation or the better management or custody of any property which is in dispute in a suit, it shall be lawful for the Court or a Judge to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager, and to grant to such receiver or manager all such powers for the management or the preservation and improvement of the property, and the collection of the rents and profits thereof, and the application and disposal of such rents and profits, as to the Court or a Judge may seem proper.”*

## **2.0 HISTORICAL BACKGROUND**

2.1 A brief historical background leading to this application is that the Plaintiff on the 16<sup>th</sup> August, 2024 commenced this matter by way of a writ of summons accompanied by a statement of claim. The writ is endorsed with the following claims:

- I. An Order and declaration that the Plaintiff is the legal and lawful owner of subdivision "A" of 833/M, Ndola in the extent of 31.1000 hectares;*
- II. An Order for vacant possession of the portion of the Plaintiff's land illegally occupied by the Defendant;*
- III. An Order that the Defendant renders an account of the profits recouped from the illegal activities in the Plaintiff's land and for payment to the Plaintiff of Mesne profits resulting from the Defendant's wrongful possession and mining activities on the Plaintiff's land;*
- IV. Damages for trespass to land;*
- V. Damages for the Plaintiff's deprivation of use and access to its land;*
- VI. An interim injunction restraining the Defendant, its agents and or servants from carrying out mining activities, building, entering or otherwise using the said land;*
- VII. Special damages as pleaded;*
- VIII. Interest thereon.*

## **3.0 AFFIDAVIT EVIDENCE**

3.1 The affidavit in support was sworn by Mwaba Haggai Mulenga, the Litigation and data protection manager in the Plaintiff's

company. He deposed that on the 1<sup>st</sup> May, 2014, the Ministry of Lands issued the Plaintiff with a certificate of title for all that piece of land in extent 31.1000 hectares more or less being Sub “A” of Lot 833/M Ndola. A copy of the certificate of title was exhibited and marked “MHM1”.

3.2 It was the deponent further averment that in or about April 2023, it came to the Plaintiff’s attention that the Defendant had encroached on a portion of Subdivision “A” of 833/m erecting structures and placing mobile equipment on the said land without the Plaintiff’s authorization, thereby infringing upon the Plaintiff’s surface rights. That to confirm this position, the Plaintiff enlisted the services of an Independent Surveyor from Petbon surveying Services, who carried out a boundary verification and confirmed that indeed the Defendant had encroached on approximately 8.9 hectares of Sub “A” of 833/M. A copy of the site plan showing the extent of the Defendant’s encroachment was exhibited and marked “MHM2”.

3.3 That in addition to the infringement upon the Plaintiff’s surface rights, the Defendant is undertaking mining activities without the necessary authority and consent from the Plaintiff who also has mining rights over the land in question, thus exacerbating the infringement upon the Plaintiff’s surface rights. Pictures showing the various activities being undertaken by the Defendant on the Plaintiff’s land was exhibited and marked “MHM 3”.

- 3.4 That despite the Plaintiff's effort to amicably resolve this matter with the Defendant, no fruitful resolution has been achieved. That consequently, the Plaintiff issued a demand for the Defendant to halt all operations and activities within the Plaintiff's land, which demand the Defendant did not adhere to. A copy of the demand letter was exhibited and marked "MHM4".
- 3.5 It was further averred that the Defendant has by its servants and or agents refused to refrain from trespassing and carry out unauthorized activities on the Plaintiff's land. That the said land is designated for future mining activities and any trespass or unauthorised activities on the Plaintiff's land will disrupt the operations of the Plaintiff company, which has been in existence since 1949.
- 3.6 Furthermore, that the Plaintiff has suffered injustice as there has been interference with the use and enjoyment of its land as beneficial and sole owner. That is a major concern of the Plaintiff that the Defendant may conduct further operations and activities on the Plaintiff's property and if not restrained the Plaintiff is likely to suffer irreparable damage.
- 3.7 The Plaintiff also filed list of authorities and Skeleton argument in support of their application. Due to the position this Court has taken which shall become apparent hereunder, I will not recast the list of authorities and skeleton arguments but will incorporate them in the decision.

#### **4.0 AFFIDAVIT IN OPPOSITION**

4.1 The Defendant did not file any opposition in this matter.

#### **5.0 ANALYSIS AND THE DECISION OF THIS COURT**

5.1 As stated above, the Defendant did not file any opposition in this matter. I am satisfied by the evidence on record in form of the affidavit of service filed on 29<sup>th</sup> August, 2024 that the Plaintiff on the 27<sup>th</sup> August, 2024 did serve the Defendant, writ of summons, statement of claim, Plaintiff's list and description of documents, affidavit in support of ex parte summons for an interim prohibitory injunction and list of authorities and skeleton arguments. This Court on the 30<sup>th</sup> August, 2024 adjourned this matter as the Defendant was not before Court. The record further indicates that the Plaintiff on the 3<sup>rd</sup> September, 2024 filed an affidavit of service wherein it was deposed that on the 2<sup>nd</sup> September, 2024, the Defendant was served with a letter of service containing the date and time for the next hearing scheduled on the 4<sup>th</sup> September, 2024. At this scheduled hearing of the inter parte injunction, the Defendant was again not before Court. This Court was satisfied that the Defendant was served with a notice hearing and proceeded to hear the application.

5.2 I have carefully considered the application before me, the affidavit and skeleton arguments in support of the Plaintiff's

application. The central issue for determination in this application is whether or not this a proper case for this Court to grant to the Plaintiff the injunction prayed for. I must start by reminding myself that this Court has discretionary power under Order 27 of the High Court Rules to grant an injunction. However, this power should be exercised judiciously, with care and caution. In the case of *Towela Akapelwa (Suing as Induna Ineta) and three others v Josiah Mubukwanu Litiya Nyumbu*<sup>1</sup>, the Supreme Court guided that judicial discretion-

***“Is an armour which a judge should employ judiciously to arrive at a just decision. The same should not be left out to the whims and caprices of a party to the action”.***

5.3 It is trite law that the grant of an injunction ought not to be issued unless there are circumstances that call for their grant. These circumstances are laid down in the *American Cynamid*<sup>1</sup> case cited by the Plaintiff in their submission. I am further guided by the Supreme Court case of *Turkey Properties v Lusaka West Development Company*<sup>2</sup> that:

***“An injunction should not be used to the advantage of one party but to keep the status quo until the matter is decided at trial without prejudicing either party’s right.”***

Furthermore, the Supreme Court in the case of *Whidden Kanugwe v Zambia Sugar PLC*<sup>3</sup> guided that:

***“The Applicant must establish a prima facie legal right to be protected by the injunction. He must also, after establishing the right, show that the balance of convenience is in his favour and that failure to give him an injunction will cause irreparable damage that cannot be atoned by damages”.***

5.4 The Supreme Court further opined in the case of ***Turkey Properties v Lusaka West Development Company***<sup>3</sup> that:

***“An injunction should not be used to the advantage of one party but to keep the status quo until the matter is decided at trial without prejudicing either party’s right”.***

5.5 In the current matter, I shall be guided by the above settled position of the law. The Plaintiff in this application, must show to the satisfaction of the Court that the property in dispute is in danger of being wasted or alienated by the Defendant for this Court to issue an injunction commanding the Defendant to refrain from doing the particular act complained of carrying out mining activities building, entering or otherwise using the said land.

5.6 I shall begin by considering the question whether, the Plaintiff has established a prima facie legal right to be protected by the injunction. The Plaintiff’s claims among others, is an Order and declaration that the Plaintiff is the legal and lawful owner of Subdivision “A” of 833/M, Ndola in the extent of 31.1000

hectares. From the evidence on record, it is a fact that the Plaintiff is the title holder of Subdivision "A" of Lot 833/M Ndola.

- 5.7 It is therefore my considered view that the Plaintiff being a holder of a certificate of title relating to Subdivision "A" of Lot 833/M Ndola is prima facie case of right to the land so demised. I am also convinced by the pictorial evidence of the Plaintiff marked "MHM3 and MHM2 a site plan showing the Defendant's encroachment" clearly shows that there is a status quo to be maintained.
- 5.8 It is therefore, my firm view that the affidavit evidence on record does satisfactory demonstrate that the Plaintiff's right to relief sought is clear.
- 5.9 Secondly, as regards the question whether the Plaintiff has shown the balance of convenience lies in his favour. Though of persuasive value to this Court. The learned author, Patrick Matibini in his book, *Zambia Civil Procedure, Commentary and Cases at page 765 to 766* observes that:

***"If the Plaintiff were to succeed at trial, the Court should proceed to the next stage and consider the balance of convenience. In Zimco Properties Limited v Lanco Limited (1988/ 1989) Z.R 92, the Supreme Court observed that the question of balance of convenience between the parties only arise if the harm done will be irreparable and damages will not suffice to recompensate the Plaintiff for any harm which may be suffered as a result of the Defendant's action which is sought to restrain. The balance of convenience test may be***

*expressed in terms of whether the risk of injustice if the injunction is refused, outweighs the risk of injustice if the injunction is granted. Thus, once the investigation has reached this stage, the decision of the Court, whether in favour of or against grant of an interim injunction, will inevitably involve some disadvantage to one which damages cannot compensate. Therefore, the extent of this uncompensable disadvantage either way is a significant factor in determining the balance of conveniences. Thus, the Court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the Plaintiff by refusing the interim injunction will be greater than that which is likely to be caused to the opposite party in granting it. The Court should exercise sound judicial discretion and should attempt to weigh the substantial mischief or injury likely to be caused to the parties if the interim injunction is granted”.*

5.10 I agree with the above opinion and is satisfactory to form a decision that the risk of injustice if the injunction is granted to the Plaintiff outweighs the risks of injustice if the injunction is declined. Hardship or inconvenience which damages cannot compensate is likely to be caused to the Plaintiff if this Court does not grant the Plaintiff the injunction.

5.11 As stated above, Interim injunction should only be granted where the right to relief is clear and it is necessary to protect a Plaintiff against irreparable injury. Irreparable injury is jury that cannot be atoned for by an award of damages and cannot possibly be repaired. In the current matter, it is my considered view that the Plaintiff is exposed to irreparable injury. This is more so that the Plaintiff is in the mining industry which is an

extractive industry. I am mindful that at this stage of the proceedings, I am precluded to consider the merit of the case, as the same must be interrogated at trial where the burden and standard of proof will play a central role.

5.12 It is my considered view that the application for interim injunction has merit. I have no hesitation in forming a firm opinion that this is a fit and proper case to grant the Plaintiff the order of interim injunction until final determination of this matter or further Orders of this Court.

5.13 The Defendant is hereby ordered to restrain either by themselves or their agents or until the final determination of this matter or further Orders of the Court from carrying out mining activities, building, entering or otherwise using the Subdivision "A" of 833/M.

5.14 Leave to appeal to the Court of Appeal is hereby denied.

**DELIVERED AT LUSAKA THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2024.**

  
**G.C. CHAWATAMA**  
**HIGH COURT JUDGE**